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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September 2014

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AND 1ST AND 2ND EXTRAORDINARY SESSIONS
OF THE LEGISLATURE**

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2d
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 11. CIVIL PRACTICE AND PROCEDURE

CHAPTER 61. Mississippi Religious Freedom Restoration Act

SEC.

11-61-1. Mississippi Religious Freedom Restoration Act; legislative findings; purpose; applicability; relation to First Amendment.

MISSISSIPPI CODE 1972

ANNOTATED

VOLUME FOUR

TITLE 11

CIVIL PRACTICE AND PROCEDURE

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CHAPTER 37

Replevin

§ 11-37-101. How replevin commenced; immediate seizure of property sought.

JUDICIAL DECISIONS

1. In general.
2. Applicability.

1. In general.

Trial court acted within its authority in ruling on a tenant's unlawful-reentry issue against a landlord because the tenant's claims against both the towing company which removed vehicles from the tenant's leased premises and the landlord stemmed from the landlord's action in using self-help to have the vehicles removed. *Crowell v. Butts*, — So. 3d —, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. Dec. 10, 2013).

Because issues regarding the possessory rights of the parties remained unresolved, remand for a new trial on the merits was warranted to determine which party had a superior possessory right, under Miss. Code Ann. §§ 11-37-101 and 85-7-251, to vehicles which a towing company towed from an auto repairman's leased premises at the landlord's direction. *Crowell v. Butts*, — So. 3d —, 2013

Miss. App. LEXIS 866 (Miss. Ct. App. Dec. 10, 2013).

Tenant, who operated an auto repair business on leased premises, met the statutory requirements to maintain a replevin action against the towing company for the return of the tenant's vehicles, when the towing company removed and stored the vehicles at the landlord's direction. Further, the tenant, who claimed possession of the vehicles under the theory of bailment, was not required to show title ownership of the vehicles or a written and documented mechanic's lien. *Crowell v. Butts*, — So. 3d —, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. Dec. 10, 2013).

2. Applicability.

Bond requirement of Miss. Code Ann. § 11-37-101 did not apply because a loan servicer commenced its action under Miss. Code Ann. § 11-37-131 and did not seek immediate possession of the borrowers' recreational vehicle. Thus, the circuit

court was under no statutory requirement to set a bond amount or require the loan servicer to post bond when it issued its third final judgment awarding the loan

servicer possession of the vehicle. *Lacoste v. Sys. & Servs. Techs.*, 126 So. 3d 111 (Miss. Ct. App. 2013).

§ 11-37-129. Judgment for defendant; default; writ of inquiry.

JUDICIAL DECISIONS

2. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, 119 So. 3d 1053 (Miss. Ct. App. 2012), writ of certiorari denied by 119 So. 3d 328, 2013 Miss. LEXIS 408 (Miss. 2013).

§ 11-37-131. How replevin commenced—immediate seizure of property not sought.

JUDICIAL DECISIONS

0.5. Jurisdiction.

2. Bond.

0.5. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of

inquiry. *Magee v. Covington County Bank*, 119 So. 3d 1053 (Miss. Ct. App. 2012), writ of certiorari denied by 119 So. 3d 328, 2013 Miss. LEXIS 408 (Miss. 2013).

2. Bond.

Bond requirement of Miss. Code Ann. § 11-37-101 did not apply because a loan servicer commenced its action under Miss. Code Ann. § 11-37-131 and did not seek immediate possession of the borrowers' recreational vehicle. Thus, the circuit court was under no statutory requirement to set a bond amount or require the loan servicer to post bond when it issued its third final judgment awarding the loan servicer possession of the vehicle. *Lacoste v. Sys. & Servs. Techs.*, 126 So. 3d 111 (Miss. Ct. App. 2013).

§ 11-37-141. Judgment for plaintiff where property not previously seized.

JUDICIAL DECISIONS

1. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, 119 So. 3d 1053 (Miss. Ct. App. 2012), writ of certiorari denied by 119 So. 3d 328, 2013 Miss. LEXIS 408 (Miss. 2013).

§ 11-37-143. Judgment for defendant where property not previously seized.

JUDICIAL DECISIONS

1. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, 119 So. 3d 1053 (Miss. Ct. App. 2012), writ of certiorari denied by 119 So. 3d 328, 2013 Miss. LEXIS 408 (Miss. 2013).

§ 11-37-145. Replevin actions to be treated as preference cases.

JUDICIAL DECISIONS

1. Summary judgment.

Summary judgment was an appropriate means to determine the possessory rights to a recreational vehicle because the judge's use of Miss. R. Civ. P. 56 supplemented — and was not inconsistent with

— the requirement under Miss. Code Ann. § 11-37-145 that replevins be resolved as early as possible. *Lacoste v. Sys. & Servs. Techs.*, 126 So. 3d 111 (Miss. Ct. App. 2013).

§ 11-37-157. Replevin cumulative and additional to all other actions.

JUDICIAL DECISIONS

1. Attorney's fees.

Because a loan servicer's right to attorney's fees under the terms of a loan agreement was in addition to its right to possess the borrowers' recreational vehicle,

the loan servicer did not have to prove it was entitled to punitive damages to be awarded attorney's fees. *Lacoste v. Sys. & Servs. Techs.*, 126 So. 3d 111 (Miss. Ct. App. 2013).

CHAPTER 43

Habeas Corpus

§ 11-43-1. To what cases the writ extends.

JUDICIAL DECISIONS

6. To obtain bail.

Petition for habeas corpus challenged the denial of bail for petitioner's capital murder charge, but failed to challenge the detention for conspiracy to commit murder, because he was legally detained with-

out bail on the conspiracy charge because he was a danger to his intended victim, Miss. Const. art. 3, § 29, cl. 3, he was not entitled to relief. *Smith v. Banks*, 134 So. 3d 715 (Miss. 2014).

CHAPTER 44

Compensation to Victims of Wrongful Conviction and Imprisonment

§ 11-44-7. Determination of eligibility for compensation; award of compensation.

JUDICIAL DECISIONS

3. Conviction held proper.

4. Evidence; admissibility.

5. Evidence; sufficiency.

6. No right to jury trial.

3. Conviction held proper.

Appellant's suit against the State for wrongful conviction and imprisonment for possession of a firearm by a convicted felon was properly dismissed. His claim that the firearm was inoperable was unavailing because he offered no evidence that it could not be readily converted to expel a projectile, and Miss. Code Ann. § 97-37-5(1) did not require the State to prove that it was operable at the time of his arrest. *Hymes v. State*, 121 So. 3d 938 (Miss. Ct. App. 2013).

4. Evidence; admissibility.

Appellant claimed that in his wrongful conviction and imprisonment suit, the trial court erred in admitting his co-defendant's prior testimony under Miss. R. Evid. 804(b)(1), because appellant's counsel in the criminal trial was ineffective in cross-examining that witness. This claim failed because appellant, in his criminal appeal based on ineffective assistance, never objected to his attorney's cross-examination of this witness. *Hymes v. State*, 121 So. 3d 938 (Miss. Ct. App. 2013).

5. Evidence; sufficiency.

Appellant's suit against the State alleging wrongful conviction and imprison-

ment was properly dismissed because he failed to present sufficient evidence to demonstrate that he did not constructively possess any of the marijuana recovered from his co-defendant's vehicle. *Hymes v. State*, 121 So. 3d 938 (Miss. Ct. App. 2013).

6. No right to jury trial.

Appellant was not entitled to a jury trial in his suit against the State alleging

wrongful conviction and imprisonment, because the right to a jury trial under Miss. Const. art. III, § 31 applies only to those cases in which a jury trial was necessary at common law, and at common law, sovereign immunity prevented citizens from suing the State. *Hymes v. State*, 121 So. 3d 938 (Miss. Ct. App. 2013).

CHAPTER 46

Immunity of State and Political Subdivisions From Liability and Suit for Torts and Torts of Employees

SEC.

11-46-1.

Definitions.

11-46-17.

Creation of Tort Claims Fund; liability insurance.

§ 11-46-1. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed unless the context otherwise requires:

(a) "Claim" means any demand to recover damages from a governmental entity as compensation for injuries.

(b) "Claimant" means any person seeking compensation under the provisions of this chapter, whether by administrative remedy or through the courts.

(c) "Board" means the Mississippi Tort Claims Board.

(d) "Department" means the Department of Finance and Administration.

(e) "Director" means the executive director of the department who is also the executive director of the board.

(f) "Employee" means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation, including firefighters who are members of a volunteer fire department that is a political subdivision. The term "employee" shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision; and

(i) For purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include:

1. Physicians under contract to provide health services with the State Board of Health, the State Board of Mental Health or any county or municipal jail facility while rendering services under the contract;

2. Any physician, dentist or other health care practitioner employed by the University of Mississippi Medical Center (UMMC) and its departmental practice plans who is a faculty member and provides health care services only for patients at UMMC or its affiliated practice sites;

3. Any physician, dentist or other health care practitioner employed by any university under the control of the Board of Trustees of State Institutions of Higher Learning who practices only on the campus of any university under the control of the Board of Trustees of State Institutions of Higher Learning;

4. Any physician, dentist or other health care practitioner employed by the State Veterans Affairs Board and who provides health care services for patients for the State Veterans Affairs Board;

(ii) The term “employee” shall also include Mississippi Department of Human Services licensed foster parents for the limited purposes of coverage under the Tort Claims Act as provided in Section 11-46-8; and

(iii) The term “employee” also shall include any employee or member of the governing board of a charter school but shall not include any person or entity acting in the capacity of an independent contractor to provide goods or services under a contract with a charter school.

(g) “Governmental entity” means the state and political subdivisions.

(h) “Injury” means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable at law or in equity.

(i) “Political subdivision” means any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including, but not limited to, any county, municipality, school district, charter school, volunteer fire department that is a chartered nonprofit corporation providing emergency services under contract with a county or municipality, community hospital as defined in Section 41-13-10, airport authority, or other instrumentality of the state, whether or not the body or instrumentality has the authority to levy taxes or to sue or be sued in its own name.

(j) “State” means the State of Mississippi and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not the body or instrumentality has the authority to levy taxes or to sue or be sued in its own name.

(k) “Law” means all species of law, including, but not limited to, any and all constitutions, statutes, case law, common law, customary law, court order, court rule, court decision, court opinion, court judgment or mandate, administrative rule or regulation, executive order, or principle or rule of equity.

SOURCES: Laws, 1984, ch. 495, § 1; reenacted without change, Laws, 1985, ch. 474, § 1; Laws, 1988, ch. 479, § 2; Laws, 1993, ch. 476, § 1; Laws, 1999, ch.

518, § 1; Laws, 2002, 3rd Ex. Sess., ch. 2, § 2; Laws, 2013, ch. 385, § 1; Laws, 2013, ch. 497, § 32, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 1 of ch. 385, Laws of 2013, effective from and after passage (approved March 20, 2013), amended this section. Section 32 of ch. 497, Laws of 2013, effective from and after July 1, 2013 (approved April 17, 2013), also amended this section. As set out above, this section reflects the language of Section 32 of ch. 497, Laws of 2013, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (i) by substituting “contract with a county or municipality, community hospital” for “contract with a county or municipality community hospital.” The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor’s Note — Laws of 2013, ch. 385, § 6, effective March 20, 2013, provides:

“SECTION 6. This act shall take effect and be in force from and after its passage [approved March 20, 2013]; volunteer fire departments shall have until July 1, 2013, to obtain and have approved the insurance policies of self-insurance reserves or combination thereof required for political subdivisions under the Tort Claims Act.”

Amendment Notes — The first 2013 amendment (ch. 385), in (f), inserted “including firefighters who are members of a volunteer fire department that is a political subdivision” to the end of the first sentence, inserted the subdivision designations, and made minor stylistic changes; in (g), deleted “and includes” preceding “and herein defined” and following “also”; rewrote (i); and made minor stylistic changes throughout.

The second 2013 amendment (ch. 497), in (f), inserted “including firefighters who are members of a volunteer fire department that is a political subdivision” at the end of the first sentence, inserted the subdivision designations and made related changes, and added (f)(iii); rewrote (i); and made minor stylistic changes throughout.

JUDICIAL DECISIONS

5. Political subdivision.

School district constitutes a governmental entity and a political subdivision pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. *Swindle v. Neshoba County Sch. Dist.*, 137 So. 3d 869 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 235 (Miss. May 8, 2014).

Definition of “governmental entity” included political subdivisions, and a county was a political subdivision. *Alexander v. Newton County*, 124 So. 3d 688 (Miss. Ct.

App. 2013), writ of certiorari denied by 123 So. 3d 450, 2013 Miss. LEXIS 565 (Miss. 2013).

Volunteer firefighter was not immune from suit under the Mississippi Tort Claims Act (MTCA) for claims arising from an automobile accident because the volunteer fire department was not a political subdivision of the State. Under Miss. Code Ann. § 95-9-1(3)(b), the firefighter could be liable for negligent operation of a vehicle. *Poppenheimer v. Estate of Coyle*, 98 So. 3d 1059 (Miss. Oct. 4, 2012).

§ 11-46-3. Declaration of legislative intent.

JUDICIAL DECISIONS

1. In general.

Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., serves

to provide immunity from suit to the State of Mississippi and its political subdivisions; however, the MTCA waives immu-

nity for claims for money damages arising out of the torts of government entities and employees while acting within the course and scope of their employment to the extent set forth in the MTCA. *Swindle v.*

Neshoba County Sch. Dist., 137 So. 3d 869 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 235 (Miss. May 8, 2014).

§ 11-46-5. Waiver of immunity; course and scope of employment; presumptions.

JUDICIAL DECISIONS

1. In general.
2. Applicability of waiver.
3. Course and scope of employment.

1. In general.

Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., serves to provide immunity from suit to the State of Mississippi and its political subdivisions; however, the MTCA waives immunity for claims for money damages arising out of the torts of government entities and employees while acting within the course and scope of their employment to the extent set forth in the MTCA. *Swindle v. Neshoba County Sch. Dist.*, 137 So. 3d 869 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 235 (Miss. May 8, 2014).

2. Applicability of waiver.

To the extent the parents' and student's claim for intentional infliction of emotional distress (as a result of alleged repeated failure to protect the student from bullying) is based on malicious conduct, it

was not barred by the Mississippi Tort Claims Act as to the individual school district officials and immunity was not waived as to the school district. *R.S. v. Starkville Sch. Dist.*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 134264 (N.D. Miss. Sept. 19, 2013).

3. Course and scope of employment.

In a case in which property owners alleged that a county supervisor, a contractor, and a subcontractor engaged in a scheme to profit from a debris-removal contract between a county and the contractor by not paying the property owners for providing a dumpsite, the property owners were not required to give the county supervisor notice of their claims because the property owners alleged that the county supervisor's conduct amounted to fraud and malice and such conduct was outside the scope of the county supervisor's employment. *Bradley v. Kelley Bros. Contrs., Inc.*, 117 So. 3d 331 (Miss. Ct. App. 2013).

§ 11-46-7. Exclusiveness of remedy; joinder of government employee; immunity for acts or omissions occurring within course and scope of employee's duties; provision of defense for and payment of judgments or settlements of claims against employees; contribution or indemnification by employee.

JUDICIAL DECISIONS

3. Course and scope of duties.
4. Applicability.
6. Employee's criminal conduct.

3. Course and scope of duties.

Employee of a state administrative agency was not personally liable when a

claimant alleged that the employee falsely imprisoned the claimant in the lobby of a state office building because the employee was immune from personal liability, under Miss. Code Ann. § 11-46-7(2), in that, at all relevant times, the employee was acting within the course and scope of the employee's employment and was entitled to discretionary immunity, under Miss. Code Ann. § 11-46-9(1)(d). *Bell v. Miss. Dep't of Human Servs.*, 126 So. 3d 999 (Miss. Ct. App. 2013).

Miss. Code Ann. § 37-9-69 applied to alleged ministerial acts of negligent failure to enforce school district policies, failure to respond to bullying by other students, and failure to discipline those bullies, thus, Miss. Cod Ann. § 11-46-9(1)(a), (d)'s discretionary immunity did not bar those claims; finding that the alleged conduct was ministerial rather than discretionary did not remove the absolute personal immunity afforded the individual officials for actions committed within the course and scope of employment. *R.S. v. Starkville Sch. Dist.*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 134264 (N.D. Miss. Sept. 19, 2013).

In judgment creditors' suit alleging a court clerk's negligence in approving the judgment debtors' supersedeas bonds prevented the creditors from recovering from the bonds, as the clerk was acting in the course and scope of his employment, he was not personally liable to the creditors; therefore, he was not obligated to indemnify the surety on his performance bond. *Newton County v. State ex rel. Dukes*, 133 So. 3d 819 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 8 (Miss. 2014), affirmed in part and reversed in part by, remanded by 133 So. 3d 805, 2014 Miss. LEXIS 143 (Miss. 2014).

In judgment creditors' suit alleging a court clerk's negligence in approving the judgment debtors' supersedeas bonds prevented the creditors from recovering from the bonds, as the clerk was acting in the course and scope of his employment when he approved the bonds, he and the county were immune from liability. *Newton*

County v. State ex rel. Dukes, 133 So. 3d 819 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 8 (Miss. 2014), affirmed in part and reversed in part by, remanded by 133 So. 3d 805, 2014 Miss. LEXIS 143 (Miss. 2014).

Under Miss. Code Ann. § 11-46-7(2), a city was not liable for its police officers' sexual contact with a runaway child because they were not acting within the course and scope of their employment at the time they engaged in the sexual misconduct. *City of Jackson v. Sandifer*, 107 So. 3d 978 (Miss. 2013).

4. Applicability.

Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., provides the exclusive remedy against a governmental entity or its employee for the act or omission which has given rise to a suit. *Swindle v. Neshoba County Sch. Dist.*, 137 So. 3d 869 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 235 (Miss. May 8, 2014).

Injured motorist's negligence action against a county was governed by the provisions of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., because the MTCA was the exclusive remedy for claims against governmental entities and their employees. *Alexander v. Newton County*, 124 So. 3d 688 (Miss. Ct. App. 2013), writ of certiorari denied by 123 So. 3d 450, 2013 Miss. LEXIS 565 (Miss. 2013).

6. Employee's criminal conduct.

A city was not liable for its police officers' sexual contact with a runaway child because the officers' conduct constituted a criminal offense, and under Miss. Code Ann. § 11-46-7(2), an employee is not considered to be acting within the course and scope of his employment and a governmental entity is not liable and is not considered to have waived immunity for any conduct of its employees if the employee's conduct constituted any criminal offense. *City of Jackson v. Sandifer*, 107 So. 3d 978 (Miss. 2013).

§ 11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.

JUDICIAL DECISIONS

1. In general.
5. Adequate governmental services.
6. Discretionary functions.
- 6.5. Ministerial duty.
7. Police or fire protection.
- 7.5. Immunity.
- 7.6. Waiver of immunity.
8. Illustrative cases.

1. In general.

Inmate's claims against the Department of Corrections—for failure to release the inmate upon completion of the inmate's sentence—were barred by Miss. Code Ann. § 11-46-9(1)(m) because the inmate did not seek administrative or other relief during the three and a half months that the inmate claimed the inmate was unlawfully detained, and the inmate was unquestionably confined in the custody of the Department of Corrections when the inmate's claims arose. *Tillman v. Miss. Dep't of Corr.*, 95 So. 3d 716 (Miss. Ct. App. 2012).

5. Adequate governmental services.

In promoting a fund-raising event to raise funds for a state school serving people who suffered from mental retardation, the Mississippi Department of Mental Health (MDMH) was immune from tort liability under Miss. Code Ann. § 11-46-9 of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, for a patron's negligence action after the patron fell down steps; the MDMH's promotion involved social and economic policy decisions, and was a discretionary function that qualified for immunity. *Miss. Dep't of Mental Health & Ellisville State Sch. v. Shaw*, 45 So. 3d 656 (Miss. 2010).

6. Discretionary functions.

Employee of a state administrative agency was not personally liable when a claimant alleged that the employee falsely imprisoned the claimant in the lobby of a state office building because the employee was immune from personal liability, un-

der Miss. Code Ann. § 11-46-7(2), in that, at all relevant times, the employee was acting within the course and scope of the employee's employment and was entitled to discretionary immunity, under Miss. Code Ann. § 11-46-9(1)(d). *Bell v. Miss. Dep't of Human Servs.*, 126 So. 3d 999 (Miss. Ct. App. 2013).

School district was immune from liability regarding a student's tort claims because the decision by the school district's employees to deny the student permission to go to a rest room during a test was a discretionary function subject to immunity. *Harris v. Bd. of Trustees of the Clinton Public Sch. Dist.*, 126 So. 3d 100 (Miss. Ct. App. 2013).

Although a county pleaded the affirmative defense of immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., in its answer to a negligence action, the county waived the defense because the county actively participated in the litigation and the county's two-year-and-four-month delay in pursuing the affirmative defense of immunity under Miss. Code Ann. § 11-46-9(1)(d) was unreasonable and unnecessary. *Alexander v. Newton County*, 124 So. 3d 688 (Miss. Ct. App. 2013), writ of certiorari denied by 123 So. 3d 450, 2013 Miss. LEXIS 565 (Miss. 2013).

Mississippi Department of Transportation (MDOT) was immune from suit under Miss. Code Ann. § 11-46-9(1)(d) as Miss. Code Ann. § 65-1-65 did not impose any specific directives as to the time, manner, and conditions for carrying out MDOT's duty to maintain highways, and the duty to remove trees from the right-of-way was discretionary; MDOT was not liable for the driver's injuries arising out of road maintenance. *Little v. Miss. DOT*, 129 So. 3d 192 (Miss. Ct. App. 2012), reversed by, remanded by 129 So. 3d 132, 2013 Miss. LEXIS 551 (Miss. 2013).

Evidence supported the conclusion that the city's refusal to extend new water service to the subdivision was based upon

a perceived lack of adequate fire flow pressure in the water line, and although that perception turned out to be incorrect, even if the city's conduct rose to the level of negligence, that did not amount to an abuse of discretion, nor did it show that the city's decision to deny new water service was arbitrary and capricious. The developer's evidence was insufficient to overcome the city's entitlement to immunity under Miss. Code Ann. §§ 11-46-9(1)(d), (g), and (h). *L&F Homes & Dev., LLC v. City of Gulfport*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 100855 (S.D. Miss. July 20, 2012), affirmed by 538 Fed. Appx. 395, 2013 U.S. App. LEXIS 16452 (5th Cir. Miss. 2013).

City was not liable for its alleged failure to properly investigate a runaway child's claim that she had sex with a police officer, as the manner in which its police department supervised, disciplined, and regulated its officers was a discretionary function; thus, the city was immune from suit under Miss. Code Ann. § 11-46-9(1)(d). *City of Jackson v. Sandifer*, 107 So. 3d 978 (Miss. 2013).

6.5. Ministerial duty.

Trial court erred in granting the Department of Human Services (DHS) summary judgment on a mother's wrongful death claim where there were conflicting affidavits as to whether a report of abuse had been made to the DHS, resolution depended on the credibility of the affiants, DHS had no discretion to determine whether the phone calls from a medical center were reports under Miss. Code Ann. § 43-21-353(1) (2009), and thus, a genuine issue of fact existed as to whether the DHS's ministerial duty to investigate was triggered. *Watkins v. Miss. Dept't of Human Servs.*, 132 So. 3d 1037 (Miss. 2014).

Miss. Code Ann. § 37-9-69 applied to alleged ministerial acts of negligent failure to enforce school district policies, failure to respond to bullying by other students, and failure to discipline those bullies, thus, Miss. Code Ann. § 11-46-9(1)(a), (d)'s discretionary immunity did not bar those claims. *R.S. v. Starkville Sch. Dist.*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 134264 (N.D. Miss. Sept. 19, 2013).

Mississippi Department of Transportation (MDOT) was not immune in a wrongful death claim alleging that a failure to place warning signs around a highway culvert, as required by Miss. Code Ann. § 65-21-1, resulted in an auto accident that caused the decedent's death because § 65-21-1 imposed a ministerial duty, and, as Miss. Code Ann. § 63-3-301 and Miss. Code Ann. § 63-3-303 included no language suggesting abrogation or repeal of § 65-21-1, that section narrowly, precisely, and specifically requiring warning posts around culverts remained in effect as an exception to the general rule of § 63-3-303 that the MDOT had discretion over such placement; Miss. Code Ann. § 65-21-1 controlled the specific issue of guide and warning posts around culverts, and § 63-3-303 controlled the discretionary placement of traffic devices that were not the subject of a specific statutory mandate. *Miss. DOT v. Nosef*, 110 So. 3d 317 (Miss. 2013).

7. Police or fire protection.

Volunteer firefighter was not immune from suit under the Mississippi Tort Claims Act (MTCA) for claims arising from an automobile accident because the volunteer fire department was not a political subdivision of the State. Under Miss. Code Ann. § 95-9-1(3)(b), the firefighter could be liable for negligent operation of a vehicle. *Poppenheimer v. Estate of Coyle*, 98 So. 3d 1059 (Miss. Oct. 4, 2012).

7.5. Immunity.

Under the Mississippi Tort Claims Act (MTCA), it was the function of a governmental entity—not the acts performed in order to achieve that function—to which immunity did or did not ascribe under the MTCA. Pursuant to the Montgomery decision, the line of cases holding otherwise was overruled; the Supreme Court of Mississippi holds that, where a statute mandates the government or its employees to act, all acts fulfilling that duty are considered mandated as well, and neither the government nor its employees enjoys immunity. *Little v. Miss. DOT*, 129 So. 3d 132 (Miss. 2013).

Commissioner of the state department of corrections, the community correctional director for the region, and a correctional

facility officer who assigned work were entitled to immunity from state law claims brought by an inmate based on injuries sustained when he was subjected to dangerous conditions and contracted tuberculosis while fulfilling the terms of his restitution at a chicken-processing plant. *Jones v. Tyson Foods, Inc.*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 143376 (N.D. Miss. Oct. 3, 2013).

Mississippi did not have to show that it qualified for immunity under Miss. Code Ann. § 11-46-9(1)(v) as it was immune from a driver's suit under Miss. Code Ann. § 11-46-9(1)(d); if an entity qualified for immunity under § 11-46-9(1)(d), the conditions for immunity under § 11-46-9(1)(v) were irrelevant. *Little v. Miss. DOT*, 129 So. 3d 192 (Miss. Ct. App. 2012), reversed by, remanded by 129 So. 3d 132, 2013 Miss. LEXIS 551 (Miss. 2013).

7.6. Waiver of immunity.

School district was not entitled to an award of summary judgment, based upon governmental immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., because, although the school district was immune under Miss. Code Ann. § 11-46-9(1)(d), the school district waived this affirmative defense by actively participating in the litigation process and unreasonably delayed its pursuit of immunity for sixteen months. *Doe v. Rankin County Sch. Dist.*, — So. 3d —, 2013 Miss. App. LEXIS 850 (Miss. Ct. App. Dec. 10, 2013).

8. Illustrative cases.

State administrative agency was not liable when a claimant alleged that an employee of the agency falsely imprisoned the claimant in the lobby of a state office building because the agency was entitled to immunity for its employment of the employee under Miss. Code Ann. §§ 11-46-9(1)(d) and 11-46-9(1)(g). *Bell v. Miss. Dep't of Human Servs.*, 126 So. 3d 999 (Miss. Ct. App. 2013).

Where three drivers appealed the Miss. R. Civ. P. 12(b)(6) dismissal of their claim against the Mississippi Department of Transportation (MDOT) because of discretionary-function immunity under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 65-1-65 required the MDOT

to maintain and repair state highways, and the MDOT was not entitled to discretionary-function immunity for failure to properly maintain and repair highways because that function was ministerial. It was the function, not the act, to which the MTCA granted or denied immunity. *Little v. Miss. DOT*, 129 So. 3d 132 (Miss. 2013).

Trial court erred in ruling that discretionary immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., barred a personal injury action, because a genuine issue of material fact existed as to whether a school district breached its duty of ordinary care in performing its ministerial duty to maintain discipline and to supervise the students, when one student assaulted another student, as required by the school district's handbook. *Swindle v. Neshoba County Sch. Dist.*, 137 So. 3d 869 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 235 (Miss. May 8, 2014).

There was no evidence the City caused or had actual notice of any loose dirt or gravel in the area where the pedestrian fell to support a claim under this section since: (1) there was no evidence that the parks and recreation director did not exercise reasonable care in inspecting the park on his daily inspections; (2) there were no complaints from park visitors about the condition of the ground in the area; and (3) the pedestrian assumed that when her foot hit the loose gravel, the loose gravel made her slip. *Hawkins v. City of Morton*, 119 So. 3d 1104 (Miss. Ct. App. 2013).

City was entitled to summary judgment in an arrestee's claim for injury allegedly suffered during an arrest because, under Miss. Code Ann. § 11-46-9(1)(c), the city was immune unless the officer acted in reckless disregard of the safety and well-being of the arrestee, and the officer's actions did not rise to the level of reckless disregard; the officer's conduct was a reasonable precautionary measure in response to surrounding circumstances. When the arrestee deliberately disobeyed the his directive, the officer was forced to act for his safety and the safety of the arrestee. *City of Jackson v. Gardner*, 108 So. 3d 927 (Miss. 2013).

City was not liable for the death of a runaway at the hands of her boyfriend, as there was no showing that police officers violated the police department's policy by failing to ascertain that the child was a runaway minor and failing to take her into custody, or that they acted with reckless disregard for the child's safety and well-being. *City of Jackson v. Sandifer*, 107 So. 3d 978 (Miss. 2013).

City was not liable for its alleged failure to properly investigate a runaway's claim that she had sex with a police officer, because any failure by the city to properly investigate the officer constituted negligence, for which the city was not liable. *City of Jackson v. Sandifer*, 107 So. 3d 978 (Miss. 2013).

Provisions of Miss. Code Ann. § 11-46-9(1)(c), which provided government immunity for duties or activities related to police or fire protection, applied to a ve-

hicle accident involving a Mississippi Forestry Commission employee who had fire suppression duties; the statute did not limit immunity to police officers and fire departments. *Herndon v. Miss. Forestry Comm'n*, 67 So. 3d 788 (Miss. Ct. App. 2010), writ of certiorari denied by 69 So. 3d 9, 2011 Miss. LEXIS 380 (Miss. 2011).

Trial court erred in granting a sheriff, county, and surety summary judgment on an individual's claims of false imprisonment and negligence where the individual raised issues of fact as to whether the sheriff or his deputies complied with their duties in accepting surrender from a bail bondsman, and whether they evinced a reckless disregard for the individual's safety and well-being in accepting his surrender. *Brooks v. Pennington*, 995 So. 2d 733 (Miss. Ct. App. 2007), writ of certiorari dismissed by 2008 Miss. LEXIS 680 (Miss. Dec. 4, 2008).

§ 11-46-11. Statute of limitations; notice of claim requirements; savings clause in favor of infants and those of unsound mind.

JUDICIAL DECISIONS

- 4. Applicability.
- 10. Discovery rule.
- 15. Illustrative cases.

4. Applicability.

In a case in which property owners alleged that a county supervisor, a contractor, and a subcontractor engaged in a scheme to profit from a debris-removal contract between a county and the contractor by not paying the property owners for providing a dumpsite, the property owners were not required to give the county supervisor notice of their claims because the property owners alleged that the county supervisor's conduct amounted to fraud and malice and such conduct was outside the scope of the county supervisor's employment. *Bradley v. Kelley Bros. Contrs., Inc.*, 117 So. 3d 331 (Miss. Ct. App. 2013).

Judgment creditors' suit alleging a court clerk's negligence in approving the judgment debtors' supersedeas bonds prevented the creditors from recovering from

the bonds was governed by the Mississippi Tort Claims Act; therefore, the Act's one-year statute of limitations, not the general three-year limitations period, applied. *Newton County v. State ex rel. Dukes*, 133 So. 3d 819 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 8 (Miss. 2014), affirmed in part and reversed in part by, remanded by 133 So. 3d 805, 2014 Miss. LEXIS 143 (Miss. 2014).

10. Discovery rule.

Judgment creditors' suit alleging a court clerk's negligence in approving the judgment debtors' supersedeas bonds prevented the creditors from recovering from the bonds was timely under the Mississippi Tort Claims Act's one-year statute of limitations, because it was filed within a year after judgment was rendered on the bonds. *Newton County v. State ex rel. Dukes*, 133 So. 3d 819 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 8 (Miss. 2014),

affirmed in part and reversed in part by, remanded by 133 So. 3d 805, 2014 Miss. LEXIS 143 (Miss. 2014).

15. Illustrative cases.

Trial court did not abuse its discretion by determining that no good cause was shown by a property owner in failing to timely serve process on a county under Miss. R. Civ. P. 4, because the owner made no attempt to obtain an extension of time to serve process on the county. *Sturdivant v. Moore Bayou Water Ass'n*, 130 So. 3d 1152 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 578, 2014 Miss. LEXIS 81 (Miss. 2014).

Where the deceased patient's daughter brought a medical malpractice suit

against the University of Mississippi Medical Center after it was discovered that a sponge was left in the patient's body during a surgery performed on September 1, 2004, plaintiff sent a notice-of-claim letter to the medical center on November 21, 2005 and filed a medical negligence suit on February 21, 2006. The Supreme Court of Mississippi held that plaintiff's survival claim based on the negligent act of leaving the sponge in the patient accrued more than one year prior to providing notice; thus, that claim was barred by the statute of limitations. *Univ. of Miss. Med. Ctr. v. McGee*, 999 So. 2d 837 (Miss. 2008).

§ 11-46-13. Jurisdiction; appeals; venue.

JUDICIAL DECISIONS

2. Venue.

Trial court erred in denying the Mississippi Department of Human Services' (MDHS's) motion for a change of venue, because the venue for suits against MDHS was in the county in which its negligence occurred, and plaintiff alleged no facts

showing that any negligent decisions by MDHS occurred in the county where she filed suit, which was where MDHS had its headquarters. *Miss. Dep't of Human Servs. v. S.C.*, 119 So. 3d 1011 (Miss. 2013).

§ 11-46-15. Limitation of liability; exemplary or punitive damages; interest; attorney's fees; reduction of award.

JUDICIAL DECISIONS

4. Governmental immunity.
5. Determination of damages.

4. Governmental immunity.

Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-15(2) bars assessment of punitive damages against state agencies. *Claiborne v. Miss. Bd. of Pharm.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

5. Determination of damages.

Because a decedent began to decline in physical and mental health shortly after a

fall upon exiting a city transport bus that sent the decedent to a hospital, and an expert causally linked the deterioration and rising medical costs to a city's negligent act, the estate administrator was awarded damages of \$250,000 under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-15(1)(b). *City of Jackson v. Estate of Stewart*, 48 So. 3d 502 (Miss. 2010).

§ 11-46-17. Creation of Tort Claims Fund; liability insurance.

(1) There is hereby created in the State Treasury a special fund to be known as the "Tort Claims Fund."

All monies that the Department of Finance and Administration receives and collects under the provisions of subsection (2) of this section and all funds that the Legislature appropriates for use by the board in administering the provisions of this chapter shall be deposited in the fund. All monies in the fund may be expended by the board for any and all purposes for which the board is authorized to expend funds under the provisions of this chapter. All interest earned from the investment of monies in the fund shall be credited to the fund. Monies remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) From and after July 1, 1993, each governmental entity other than political subdivisions shall participate in a comprehensive plan of self-insurance or one or more policies of liability insurance or combination of the two, all to be administered by the Department of Finance and Administration. The plan shall provide coverage to each of such governmental entities for every risk for which the board determines the respective governmental entities to be liable in the event of a claim or suit for injuries under the provisions of this chapter, including claims or suits for injuries from the use or operation of motor vehicles; the board may allow the plan to contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to governmental entities. The plan may also provide coverage for liabilities outside the provisions of this chapter, including, but not limited to, liabilities arising from Sections 1983 through 1987 of Title 42 of the United States Code and liabilities from actions brought in foreign jurisdictions, and the board shall establish limits of coverage for such liabilities. Each governmental entity participating in the plan shall make payments to the board in such amounts, times and manner determined by the board as the board deems necessary to provide sufficient funds to be available for payment by the board of the costs it incurs in providing coverage for the governmental entity. Each governmental entity of the state other than the political subdivisions thereof participating in the plan procured by the board shall be issued by the board a certificate of coverage whose form and content shall be determined by the board but which shall have the effect of certifying that, in the opinion of the board, each of such governmental entities is adequately insured.

Before July 1, 1993, the Board of Trustees of State Institutions of Higher Learning may provide liability coverage for each university, department, trustee, employee, volunteer, facility and activity as the board of trustees, in its discretion, shall determine advisable. If liability coverage, either through insurance policies or self-insurance retention is in effect, immunity from suit shall be waived only to the limit of liability established by the insurance or self-insurance program. From and after July 1, 1993, liability coverage established by the board of trustees must conform to the provisions of this section and must receive approval from the board. Should the board reject a plan, the board of trustees shall participate in the liability program for state agencies established by the board.

(3) All political subdivisions shall, from and after October 1, 1993, obtain a policy or policies of insurance, establish self-insurance reserves, or provide a

combination of insurance and reserves as necessary to cover all risks of claims and suits for which political subdivisions may be liable under this chapter; a political subdivision shall not be required to obtain pollution liability insurance. However, this shall not limit any cause of action against a political subdivision relative to limits of liability under the Tort Claims Act. The policy or policies of insurance or self-insurance may contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to political subdivisions. All the plans of insurance or reserves or combination of insurance and reserves shall be submitted for approval to the board. The board shall issue a certificate of coverage to each political subdivision whose plan it approves in the same manner as provided in subsection (2) of this section. Whenever any political subdivision fails to obtain the board's approval of its plan, the political subdivision shall act in accordance with the rules and regulations of the board and obtain a satisfactory plan of insurance or reserves or combination of insurance and reserves to be approved by the board.

(4) Any governmental entity may purchase liability insurance to cover claims in excess of the amounts provided for in Section 11-46-15 and may be sued by anyone in excess of the amounts provided for in Section 11-46-15 to the extent of the excess insurance carried; however, the immunity from suit above the amounts provided for in Section 11-46-15 shall be waived only to the extent of excess liability insurance carried.

(5) Any two (2) or more political subdivisions may contract to pool their liabilities as a group under this chapter. The pooling agreements and contracts may provide for the purchase of one or more policies of liability insurance or the establishment of self-insurance reserves or a combination of insurance and reserves and shall be subject to approval by the board in the manner provided in subsections (2) and (3) of this section.

(6) The board shall have subrogation rights against a third party for amounts paid out of any plan of self-insurance administered by the board pursuant to this section on behalf of a governmental entity that is not a political subdivision as a result of damages caused under circumstances creating a cause of action in favor of such governmental entity against a third party. The board shall deposit in the Tort Claims Fund all monies received in connection with the settlement or payment of any claim, including proceeds from the sale of salvage.

SOURCES: Laws, 1984, ch. 495; reenacted and amended, Laws, 1985, ch. 474, § 9; reenacted and amended, Laws, 1986, ch. 438, § 4; Laws, 1987, ch. 483, § 9; Laws, 1988, ch. 442, § 6; Laws, 1988, ch. 479, § 4; Laws, 1989, ch. 537, § 6; Laws, 1990, ch. 518, § 7; Laws, 1991, ch. 618, § 7; Laws, 1992, ch. 491 § 8; Laws, 1993, ch. 476, § 6; Laws, 1995, ch. 568, § 1; Laws, 1996, ch. 377, § 1; Laws, 1998, ch. 496, § 1; Laws, 2013, ch. 385, § 2, eff from and after passage (approved Mar. 20, 2013.)

Editor's Note — Laws of 2013, ch. 385, § 6, effective March 20, 2013, provides:

“SECTION 6. This act shall take effect and be in force from and after its passage [approved March 20, 2013]; volunteer fire departments shall have until July 1, 2013, to obtain and have approved the insurance policies of self-insurance reserves or combination thereof required for political subdivisions under the Tort Claims Act.”

Amendment Notes — The 2013 amendment, in (2), substituted “or” for “and/or” and inserted “or combination of the two, all to be” in the first sentence; deleted “In addition to the coverage authorized in the preceding sentence” at the beginning of the third sentence; in (3), substituted “or reserves or combination of insurance and reserves” for “and/or reserves” in the fourth and last sentences; in (5), substituted “may contract to pool” for “are hereby authorized to enter into agreement and to contract between and among themselves for the purpose of pooling” in the first sentence and substituted “or” for “and/or” and inserted “or a combination of insurance and reserves” in the second sentence; and in (6), inserted “that is not a political subdivision” in the first sentence; and made minor stylistic changes throughout.

CHAPTER 51

Appeals

§ 11-51-3. Appeals to Supreme Court.

JUDICIAL DECISIONS

7. Persons entitled to appeal.
12. Finality of determination.
13. —Nature and character of final determination.
14. —Final judgments and decrees.

7. Persons entitled to appeal.

Because the decedent’s adult children did not appeal the chancellor’s decision to void the warranty deeds conveying the subject property from the decedent to the decedent’s children, they no longer possessed standing, pursuant to Miss. Code Ann. § 11-51-3 and Miss. R. App. P. 3, to appeal the chancellor’s finding that the children’s siblings obtained title to the property at issue by adverse possession. *Posey v. Pope*, 130 So. 3d 1183 (Miss. Ct. App. 2014).

12. Finality of determination.

13. —Nature and character of final determination.

State supreme court was without jurisdiction to entertain an appeal under Miss.

Code Ann. § 11-51-3 because an order setting aside a prior order of reinstatement did not adjudicate the case on its merits, and left a pending motion to be dealt with by the assigned judge. *Lafontaine v. Holliday*, 110 So. 3d 785 (Miss. 2013).

14. —Final judgments and decrees.

Chancellor’s order that found father in contempt for failing to pay child support but did not determine the amount of the arrearage or the amount of future child support the father would be obligated to pay was not a final order and could not be considered on appeal. *Maurer v. Boyd*, 111 So. 3d 690 (Miss. Ct. App. 2013).

§ 11-51-31. Bond for supersedeas.

JUDICIAL DECISIONS

2. Bond on supersedeas.

In judgment creditors' suit alleging a court clerk's negligence in approving the judgment debtors' supersedeas bonds prevented the creditors from recovering from the bonds, as the clerk was acting in the course and scope of his employment when he approved the bonds, he and the county

were immune from liability. *Newton County v. State ex rel. Dukes*, 133 So. 3d 819 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 8 (Miss. 2014), affirmed in part and reversed in part by, remanded by 133 So. 3d 805, 2014 Miss. LEXIS 143 (Miss. 2014).

§ 11-51-75. Appeal to circuit court from board of supervisors, municipal authorities.

JUDICIAL DECISIONS

3. Bill of exceptions in general.
6. Persons entitled to appeal.
7. Time for appeal.

3. Bill of exceptions in general.

Trial court was without jurisdiction to review a property owner's claim that a town's destruction of the owner's property was an unconstitutional taking because the owner failed to perfect the owner's appeal from the town board of alderman's decision to demolish the owner's warehouse as a public nuisance in that the owner failed to comply with Miss. Code Ann. § 11-51-75, by not embodying the facts and proceedings below in a proper bill of exceptions. *Carthan v. Patterson*, 134 So. 3d 374 (Miss. Ct. App. 2014).

Bill of exceptions did not comply with the procedural requirements set forth in Miss. Code Ann. § 11-51-75 because it did not contain the mayor's signature, and a city also failed to comply with the requirements because, rather than noting the portions of the resident's bill of exceptions that it deemed incorrect and allowing him to amend it, it filed its own bill of exceptions; however, the court of appeals did not dismiss for lack of subject matter jurisdiction the resident's appeal of a decision of the city's board of aldermen because the bills of exceptions contained the pertinent and important facts and documents and constituted a record upon which the court of appeals could intelli-

gently act. *McKee v. City of Starkville*, 97 So. 3d 97 (Miss. Ct. App. 2012).

Circuit court lacked jurisdiction over a high school's attempted appeal of an expulsion decision by a school board because the student's bill of exceptions lacked the signature of the school board president and, as such, the bill of exceptions did not comply with Miss. Code Ann. §§ 37-7-115 and 11-51-75. *M.L.R. v. Pontotoc City Sch. Dist. Bd. of Trs.*, 46 So. 3d 874 (Miss. Ct. App. 2010).

6. Persons entitled to appeal.

In an appeal under Miss. Code Ann. § 11-51-75 by vendors of a city council's decision to award a contract for the operation of a wastewater facility to a partnership, the circuit court properly denied the partnership's motion to intervene because the partnership was not aggrieved and was neither a proper, necessary, nor indispensable party. *City of Jackson v. United Water Servs.*, 47 So. 3d 1160 (Miss. 2010).

7. Time for appeal.

Complaint that was amended to include a claim under Miss. Code Ann. § 11-51-75 (2002), which the trial court advised would provide for review of a decision of municipal authorities essentially disqualifying a candidate from a mayoral election, was properly dismissed. The claim was not made within ten days of the municipal authorities' decision. *Town of Terry v. Smith*, 48 So. 3d 507 (Miss. 2010).

§ 11-51-77. Appeal from assessment of taxes — Attorney General, district attorney, county attorney may appeal.

JUDICIAL DECISIONS

7. Time for appeal.

Circuit court properly granted summary judgment to a county board of supervisors and denied the leaseholders' request for a declaratory judgment because the leaseholders did not timely lodge an objection to a spike in their ad valorem taxes with the board or present sufficient

evidence to establish that they leased the land for agricultural purposes, none of their 2010 assessments varied more than 10 percent from the previous year, and the court order that they cited did not apply to them. *Darden v. Bd. of Supervisors*, — So. 3d —, 2014 Miss. App. LEXIS 91 (Miss. Ct. App. Feb. 18, 2014).

§ 11-51-79. Appeals from the county court.

JUDICIAL DECISIONS

2. Jurisdiction.

7. Judgments or orders on appeal.

8. —Trial de novo.

2. Jurisdiction.

On remand, it was of no consequence that one of the consolidated cases originated in county court because Miss. Code Ann § 11-51-79 required that the replevin and mechanic's lien cases be remanded to the circuit court, not the county court, for further proceedings and consideration of all claims, possession, and enforcement of liens. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, 125 So. 3d 659 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013), writ of certiorari

denied by 125 So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

7. Judgments or orders on appeal.

8. —Trial de novo.

Because issues regarding the possessory rights of the parties remained unresolved, remand for a new trial on the merits was warranted to determine which party had a superior possessory right, under Miss. Code Ann. §§ 11-37-101 and 85-7-251, to vehicles which a towing company towed from an auto repairman's leased premises at the landlord's direction. *Crowell v. Butts*, — So. 3d —, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. Dec. 10, 2013).

§ 11-51-93. Certiorari proceedings in circuit court.

JUDICIAL DECISIONS

13. Dismissal of certiorari.

Circuit court did not abuse its discretion by failing to grant a writ of certiorari, pursuant to Miss. Code Ann. § 11-51-93, based on an affidavit submitted by petitioner regarding broad statements made by a county prosecutor as to the prosecutor's memory about in absentia traffic tickets in general; the circuit court did not rule the affidavit was not relevant or admissible, within the meaning of Miss. R. Evid. 406, rather the circuit court found

the affidavit alone was insufficient to grant certiorari. *Abraham v. State*, 61 So. 3d 199 (Miss. Ct. App. 2010).

Circuit court did not abuse its discretion in denying a petition for a writ of certiorari, Miss. Code Ann. § 11-51-93, after a justice court found petitioner guilty in absentia of two traffic offenses, because petitioner did not provide the required justice court record for the circuit court to review and, as such, petitioner did not show "good cause" as to why his petition

should have been granted; the record did not indicate any effort by petitioner to secure the justice court record or any evidence the justice court ever received

notice of petitioner's attempt to file an appeal of its judgment, as required by Miss. Unif. Cir. & Cty. R. 5.04. *Abraham v. State*, 61 So. 3d 199 (Miss. Ct. App. 2010).

§ 11-51-101. State, county, and municipality, and officials representing them, may appeal without bond; prepayment of costs in lower court; costs of record of trial court.

JUDICIAL DECISIONS

2. Particular applications.

Trial court erred in enforcing a supersedeas bond against a city as a surety because the bond did not include two valid sureties or a surety company, and thus, the circuit clerk did not have the authority to receive it or issue supersedeas upon it;

the city was not required to post a bond to stay the judgment and pursue its appeal because it was exempted by statute and procedural rule from the requirement to file a supersedeas bond. *City of Belzoni v. Johnson*, 121 So. 3d 216 (Miss. 2013).

CHAPTER 53

Costs

§ 11-53-17. Poor persons may sue without security for costs.

JUDICIAL DECISIONS

1. In general.

In a premises liability case, plaintiff was not entitled to proceed in forma pauperis on appeal, as any right to proceed in forma pauperis in a civil case existed only

at the trial level. *Davis v. Office Max*, 131 So. 3d 588 (Miss. Ct. App. 2013), writ of certiorari denied by 132 So. 3d 579, 2014 Miss. LEXIS 97 (Miss. 2014).

CHAPTER 55

Litigation Accountability Act of 1988

§ 11-55-3. Definitions.

JUDICIAL DECISIONS

2. "Frivolous."

Father's appeal of a chancellor's denial of the father's recusal motion was frivolous and thus without substantial justification because the chancellor had recused

himself long before the appeal, and the father was aware of the recusal. *Balius v. Gaines*, 95 So. 3d 730 (Miss. Ct. App. 2012).

§ 11-55-5. Assessment of attorney fees and costs against attorney or party for meritless action, claim or defense, unwarranted delay, or unnecessary proceedings.

JUDICIAL DECISIONS

1. In general.
3. Payment of attorneys' fees awarded.
4. Attorneys' fees awarded not excessive.
5. Payment of attorneys' fees denied.

1. In general.

Husband's claim that the chancery court should have sanctioned his wife under the Litigation Accountability Act was procedurally barred because the husband never raised it before the chancery court. *Pierce v. Pierce*, 132 So. 3d 553 (Miss. 2014).

3. Payment of attorneys' fees awarded.

As appellant failed to serve a complaint on an estate and his claim against the estate was time barred, the trial court did not abuse its discretion in awarding the estate attorneys' fees under Miss. Code Ann. § 11-55-5(1). *Covington v. McDaniel* (In re Estate of Necaize), 126 So. 3d 49 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 598 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 601 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 610 (Miss. 2013).

Attorney's fees were awarded in favor of and against the father in a custody proceeding even though the father was proceeding pro se in an appeal of a chancellor's denial of the father's recusal motion.

The appeal was without substantial justification because the chancellor had recused himself long before the appeal, and the father was aware of the recusal. *Balius v. Gaines*, 95 So. 3d 730 (Miss. Ct. App. 2012).

4. Attorneys' fees awarded not excessive.

Owner was properly awarded attorneys fees and costs of \$32,837.06 for slander of title where a law firm filed lis pendens notices claiming that the land the transportation commission was seeking to condemn was of interest in a Louisiana action, when in fact the land had nothing to do with the Louisiana action and the same parties were not involved; the firm stipulated that the \$200 per hour rate was reasonable. *Lehman v. Miss. Transp. Comm'n*, 127 So. 3d 277 (Miss. Ct. App. 2013), writ of certiorari denied by 127 So. 3d 1115, 2013 Miss. LEXIS 658 (Miss. 2013).

5. Payment of attorneys' fees denied.

Chancery court did not err in failing to sanction a wife under the Litigation Accountability Act because the wife did not withhold the information from the chancery court, and the information was before the chancery court when it made the original attorney's fees award as well as the attorney's fees award on remand. *Pierce v. Pierce*, 132 So. 3d 553 (Miss. 2014).

CHAPTER 57

Structured Settlements

§ 11-57-7. Transfers of structured settlement payment rights.

JUDICIAL DECISIONS

- | | |
|-------------------------------|---------------------------------|
| 1. [Reserved for future use.] | 3. Transfer deemed ineffective. |
| 2. Notice of transfer. | 4. Court approval of transfer. |

1. [Reserved for future use.]**2. Notice of transfer.**

Notice of the transfer of structured settlement payment rights under Miss. Code Ann. § 11-5-11(2) requires a return for a date certain similar to the procedure authorized in Miss. R. Civ. P. 81(d)(5); once the original notice is provided to an interested party, notice of subsequent proceedings must comply with Miss. R. Civ. P. 5. *RSL Funding, LLC v. Saucier* (In re Saucier), 130 So. 3d 1108 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 71 (Miss. 2014), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 74 (Miss. 2014).

3. Transfer deemed ineffective.

As appellant did not provide appellee with the notice required under Miss. Code Ann. 11-57-11(2) of Mississippi's Structured Settlement Protection Act, Miss. Code Ann. §§ 11-57-1 through 11-57-1-15, appellee's purported transfer to appellant of his rights to receive structured settle-

ment payments was ineffective. *RSL Funding, LLC v. Saucier* (In re Saucier), 130 So. 3d 1108 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 71 (Miss. 2014), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 74 (Miss. 2014).

4. Court approval of transfer.

Because the Mississippi Structured Settlement Protection Act, Miss. Code Ann. §§ 11-57-1 through 11-57-1-15, requires court approval of a transfer of structured settlement payment rights, a civil action is commenced by filing a complaint with the court; to obtain personal jurisdiction over an interested party, service of process is required consistent with either Miss. R. Civ. P. 4 or 81. *RSL Funding, LLC v. Saucier* (In re Saucier), 130 So. 3d 1108 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 71 (Miss. 2014), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 74 (Miss. 2014).

§ 11-57-11. Application for transfer; notification; hearing.**JUDICIAL DECISIONS**

1. [Reserved for future use.]
2. Notice of transfer.
3. Transfer deemed ineffective.
4. Court approval of transfer.

1. [Reserved for future use.]**2. Notice of transfer.**

Notice of the transfer of structured settlement payment rights under Miss. Code Ann. § 11-5-11(2) requires a return for a date certain similar to the procedure authorized in Miss. R. Civ. P. 81(d)(5); once the original notice is provided to an interested party, notice of subsequent proceedings must comply with Miss. R. Civ. P. 5. *RSL Funding, LLC v. Saucier* (In re Saucier), 130 So. 3d 1108 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 71 (Miss. 2014), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 74 (Miss. 2014).

3. Transfer deemed ineffective.

As appellant did not provide appellee with the notice required under Miss. Code

Ann. 11-57-11(2) of Mississippi's Structured Settlement Protection Act, Miss. Code Ann. §§ 11-57-1 through 11-57-1-15, appellee's purported transfer to appellant of his rights to receive structured settlement payments was ineffective. *RSL Funding, LLC v. Saucier* (In re Saucier), 130 So. 3d 1108 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 71 (Miss. 2014), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 74 (Miss. 2014).

4. Court approval of transfer.

Because the Mississippi Structured Settlement Protection Act, Miss. Code Ann. §§ 11-57-1 through 11-57-1-15, requires court approval of a transfer of structured settlement payment rights, a civil action is commenced by filing a complaint with the court; to obtain personal jurisdiction over an interested party, service of process is required consistent with either Miss. R. Civ. P. 4 or 81. *RSL Funding, LLC v. Saucier* (In re Saucier), 130 So.

3d 1108 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 74 (Miss. 2014).
Miss. LEXIS 71 (Miss. 2014), writ of cer-

CHAPTER 61

Mississippi Religious Freedom Restoration Act

SEC.
11-61-1. Mississippi Religious Freedom Restoration Act; legislative findings; purpose; applicability; relation to First Amendment.

§ 11-61-1. Mississippi Religious Freedom Restoration Act; legislative findings; purpose; applicability; relation to First Amendment.

(1) This section shall be known and may be cited as the Mississippi Religious Freedom Restoration Act.

(2) The Mississippi Legislature finds the following:

(a) The framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(b) Laws “neutral” toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(c) Government should not substantially burden religious exercise without compelling justification;

(d) In *Employment Division v. Smith*, 494 U.S. 872 (1990), the United States Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(e) The compelling interest test as set forth in prior federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(3) The purposes of this section are as follows:

(a) To restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(b) To provide a claim or defense to persons whose religious exercise is substantially burdened by government.

(4) As used in this section, the following words shall have the following meanings:

(a) “Government” means any branch, department, agency, instrumentality or political subdivision of the State of Mississippi and any official or other person acting under color of law of the State of Mississippi.

(b) “Demonstrates” means to meet the burdens of going forward with the evidence and of persuasion.

(c) “Exercise of religion” means the exercise of religion under the First Amendment to the Constitution.

(5)(a) Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, except as provided in paragraph (b) of this subsection.

(b) Government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person:

(i) Is in furtherance of a compelling governmental interest; and

(ii) Is the least restrictive means of furthering that compelling governmental interest.

(6) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government, as defined by subsection (4) of this section. Standing to assert a claim or defense under this section shall be the same as the general rules of standing under Article III of the United States Constitution.

(7)(a) This section applies to all state laws, rules, regulations and any municipal or county ordinances, rules or regulations and the implementation of those laws, whether statutory or otherwise, and whether adopted before or after July 1, 2014.

(b) Any such law, rule, regulation or ordinances adopted after July 1, 2014, shall be subject to this section unless such law explicitly excludes such application by reference to this section.

(8) Nothing in this section shall be construed to authorize any government to burden any religious belief.

(9) Nothing in this section shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this section. As used in this subsection, the term “granting,” used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(10) Nothing in this section shall create any rights by an employee against an employer if the employer is not the government.

SOURCES: Laws, 2014, ch. 474, § 1, eff from and after July 1, 2014.

TITLE 13

EVIDENCE, PROCESS AND JURIES

Chapter 5.	Juries	13-5-1
Chapter 7.	State Grand Jury Act	13-7-1

CHAPTER 1

Evidence

IN GENERAL

§ 13-1-5. Competency of husband and wife.

JUDICIAL DECISIONS

2. Construction and application generally.
5. Witness against other spouse.

2. Construction and application generally.

In a divorce case, the chancellor did not err in allowing the husband's previous wife to testify about the reason for her divorce, as it was relevant to the husband's character and to child custody. She did not testify to any confidential commu-

nications under Miss. Code Ann. § 13-1-5 or Miss. R. Evid. 504. *McNeese v. McNeese*, 119 So. 3d 264 (Miss. 2013).

5. Witness against other spouse.

Because defense counsel failed to lodge an objection to the husband's testimony against defendant at trial, defendant's claim was barred from review. *Sandlin v. State*, — So. 3d —, 2013 Miss. LEXIS 538 (Miss. Oct. 10, 2013).

CHAPTER 3

Process, Notice, and Publication

§ 13-3-57. Service on nonresident business not qualified to do business in state; survival of cause of action in case of death or inability to act; service on nonresident executor, administrator, etc.

JUDICIAL DECISIONS

3. What constitutes doing business within state.
5. Illustrative cases.

3. What constitutes doing business within state.

Trial court erred in granting a limited liability company's (LLC) motion to dismiss due to lack of personal jurisdiction because it was "doing business" within the State under the long-arm statute; the LLC

collaborated with a corporation about creating a sports-training facility in the State, communicated and planned furthering its formation, participated in meetings in the State, substantially participated in the creation of a Mississippi company, and became members of that company. *Joshua Props., LLC v. D1 Sports Holdings, LLC*, 130 So. 3d 1089 (Miss. 2014).

5. Illustrative cases.

Out-of-state law firm was subject to personal jurisdiction in Mississippi with respect to claims of legal malpractice and related other issues because firm committed tort against contractor within State of Mississippi, it had sufficient minimum

contacts within State, and traditional notions of fair play and substantial justice were not offended because it purposefully availed itself of benefits and protections of Mississippi law. *Baker & McKenzie, LLP v. Evans*, 123 So. 3d 387 (Miss. 2013).

CHAPTER 5

Juries

SEC.

13-5-41. Number of grand jurors.

§ 13-5-41. Number of grand jurors.

The number of grand jurors shall not be less than fifteen (15) nor more than twenty-five (25), in the discretion of the court.

SOURCES: Codes, 1892, § 2371; 1906, § 2700; Hemingway's 1917, § 2193; 1930, § 2046; 1942, § 1779; Laws, 1896, ch. 84; Laws, 1974, ch. 378, § 9; Laws, 2013, ch. 476, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment substituted “twenty-five (25)” for “twenty (20).”

§ 13-5-47. Judge to charge the grand jury.

JUDICIAL DECISIONS

3. Subpoena.

Trial court properly denied a public utility's motion to quash a grand jury subpoena because issuance of the subpoena was a lawful exercise of the grand jury's investigative authority, and the evidence was relevant to its investigation and had the potential to result in criminal

indictments; when the grand jury seeks information relevant to a legitimate criminal investigation, and that information has the potential to support probable cause to indict, the grand jury should not be hindered. *Entergy Miss., Inc. v. State*, 132 So. 3d 568 (Miss. 2014).

§ 13-5-67. Impaneling of alternate jurors.

JUDICIAL DECISIONS

2. Application.

Circuit court properly exercised its discretion in excusing a juror who was allegedly sleeping during the presentation of the audio evidence of the victim's interview with the doctor and replacing him with an alternate juror. *Carpenter v. State*, 132 So. 3d 1053 (Miss. Ct. App.

2013), writ of certiorari denied by 132 So. 3d 579, 2014 Miss. LEXIS 142 (Miss. 2014).

Trial court did not abuse its discretion in denying defendant's motion for a new trial based upon juror misconduct because a juror testified that she did not have any of information sought during voir dire

prior to trial or during voir dire. *Vaughn v. State*, 111 So. 3d 1289 (Miss. Ct. App. 2013).

§ 13-5-69. Examination of jurors by attorneys or litigants.

JUDICIAL DECISIONS

3. Examination as to particular matters.

New trial was not warranted because defendant failed to show that the juror had substantial knowledge of his relation-

ship with the prosecution's witness, which was that of the brother of the prosecution witness's great uncle by marriage. *Walker v. State*, 121 So. 3d 320 (Miss. Ct. App. 2013).

§ 13-5-93. Nine jurors may return a verdict in civil cases.

JUDICIAL DECISIONS

2. Compromise verdict.

Although a trial judge was unable to instruct a jury regarding a compromise verdict before the jury returned with a verdict, the failure to give the instruction did not warrant reversal because on both occasions the jury was polled, at least nine members of the jury found a subcontractor was entitled to damages in its breach of

contract action against a general contractor, and on both occasions, the jury awarded \$41,500, and, as such, the jury's conclusion that the subcontractor was entitled to damages both times indicated no compromise was needed. *DC General Contractors, Inc. v. Slay Steel, Inc.*, 109 So. 3d 577 (Miss. Ct. App. 2013).

CHAPTER 7

State Grand Jury Act

§ 13-7-1. Short title; citation of state grand juries [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 1; reenacted without change, Laws, 1998, ch. 382, § 1; reenacted without change, Laws, 1999, ch. 480, § 1; reenacted without change, Laws, 2002, ch. 471, § 1; reenacted without change, Laws, 2011, ch. 337, § 1; reenacted without change, Laws, 2014, ch. 526, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

This section was reenacted without change by Laws of 2014, ch. 526, § 1, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-3. Definitions [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 2; reenacted without change, Laws, 1998, ch. 382, § 2; reenacted without change, Laws, 1999, ch. 480, § 2; reenacted without change, Laws, 2002, ch. 471, § 2; reenacted without change, Laws, 2011, ch. 337, § 2; reenacted without change, Laws, 2014, ch. 526, § 2, eff from and after July 1, 2014.

Editor’s Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

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This section was reenacted without change by Laws of 2014, ch. 526, § 2, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-5. State grand jury system established; number of jurors; meeting location; quorum [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 3; reenacted without change, Laws, 1998, ch. 382, § 3; reenacted without change, Laws, 1999, ch. 480, § 3; reenacted without change, Laws, 2002, ch. 471, § 3; reenacted without change, Laws, 2011, ch. 337, § 3; reenacted without change, Laws, 2014, ch. 526, § 3, eff from and after July 1, 2014.

Editor’s Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 3, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-7. Jurisdiction of state grand jury; petition to impanel state grand jury; impaneling state grand jury; powers and duties of impaneling judge [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 4; reenacted without change, Laws, 1998, ch. 382, § 4; reenacted without change, Laws, 1999, ch. 480, § 4; reenacted without change, Laws, 2002, ch. 471, § 4; reenacted without change, Laws, 2011, ch. 337, § 4; reenacted without change, Laws, 2014, ch. 526, § 4, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 4, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-9. Return of indictment by state grand jury; powers and duties of and law applicable to state grand juries [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 5; reenacted without change, Laws, 1998, ch. 382, § 5; reenacted without change, Laws, 1999, ch. 480, § 5; reenacted without change, Laws, 2002, ch. 471, § 5; reenacted without change, Laws, 2011, ch. 337, § 5; reenacted without change, Laws, 2014, ch. 526, § 5, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 5, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-11. Duties of Attorney General or designee [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 6; reenacted without change, Laws, 1998, ch. 382, § 6; reenacted without change, Laws, 1999, ch. 480, § 6; reenacted without change, Laws, 2002, ch. 471, § 6; reenacted without change, Laws, 2011, ch. 337, § 6; reenacted without change, Laws, 2014, ch. 526, § 6, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 6, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-13. Clerk of state grand jury; compensation [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 7; reenacted without change, Laws, 1998, ch. 382, § 7; reenacted without change, Laws, 1999, ch. 480, § 7; reenacted without change, Laws, 2002, ch. 471, § 7; reenacted without change, Laws, 2011, ch. 337, § 7; reenacted without change, Laws, 2014, ch. 526, § 7, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 7, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-15. Creation of list of potential jurors; selection of jurors; grounds for excusing juror from service; swearing of jurors; compensation of jurors [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 8; reenacted without change, Laws, 1998, ch. 382, § 8; reenacted without change, Laws, 1999, ch. 480, § 8; reenacted without change, Laws, 2002, ch. 471, § 8; reenacted without change, Laws, 2011, ch. 337, § 8; reenacted without change, Laws, 2014, ch. 526, § 8, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 8, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-17. Foreman and deputy foreman of grand jury [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 9; reenacted without change, Laws, 1998, ch. 382, § 9; reenacted without change, Laws, 1999, ch. 480, § 9; reenacted without change, Laws, 2002, ch. 471, § 9; reenacted without change, Laws,

2011, ch. 337, § 9; reenacted without change, Laws, 2014, ch. 526, § 9, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 9, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-19. Challenging the grand jury [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 10; reenacted without change, Laws, 1998, ch. 382, § 10; reenacted without change, Laws, 1999, ch. 480, § 10; reenacted without change, Laws, 2002, ch. 471, § 10; reenacted without change, Laws, 2011, ch. 337, § 10; reenacted without change, Laws, 2014, ch. 526, § 10, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 10, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-21. Subpoenas and subpoenas duces tecum; contempt [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 11; reenacted without change, Laws, 1998, ch. 382, § 11; reenacted without change, Laws, 1999, ch. 480, § 11; reenacted without change, Laws, 2002, ch. 471, § 11; reenacted without change, Laws, 2011, ch. 337, § 11; reenacted without change, Laws, 2014, ch. 526, § 11, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 11, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-23. Amending petition and order establishing and impaneling state grand jury [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 12; reenacted without change, Laws, 1998, ch. 382, § 12; reenacted without change, Laws, 1999, ch. 480, § 12; reenacted without change, Laws, 2002, ch. 471, § 12; reenacted without change, Laws, 2011, ch. 337, § 12; reenacted without change, Laws, 2014, ch. 526, § 12, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 12, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-25. Recording of proceedings of state grand jury; defendants right to review record; custody of records [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 13; reenacted without change, Laws, 1998, ch. 382, § 13; reenacted without change, Laws, 1999, ch. 480, § 13; reenacted without change, Laws, 2002, ch. 471, § 13; reenacted without change, Laws, 2011, ch. 337, § 13; reenacted without change, Laws, 2014, ch. 526, § 13, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 13, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-27. Administering oath to witnesses [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 14; reenacted without change, Laws, 1998, ch. 382, § 14; reenacted without change, Laws, 1999, ch. 480, § 14; reenacted without change, Laws, 2002, ch. 471, § 14; reenacted without change, Laws, 2011, ch. 337, § 14; reenacted without change, Laws, 2014, ch. 526, § 14, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 14, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-29. Secrecy of proceedings; exceptions; penalties for violation [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 15; reenacted without change, Laws, 1998, ch. 382, § 15; reenacted without change, Laws, 1999, ch. 480, § 15; reenacted without change, Laws, 2002, ch. 471, § 15; reenacted without change, Laws, 2011, ch. 337, § 15; reenacted without change, Laws, 2014, ch. 526, § 15, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 15, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-31. Authority of impaneling judge to hear matters arising from grand jury proceedings [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 16; reenacted without change, Laws, 1998, ch. 382, § 16; reenacted without change, Laws, 1999, ch. 480, § 16; reenacted without change, Laws, 2002, ch. 471, § 16; reenacted without change, Laws, 2011, ch. 337, § 16; reenacted without change, Laws, 2014, ch. 526, § 16, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 16, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-33. Attorney general or designee to coordinate scheduling activities [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 17; reenacted without change, Laws, 1998, ch. 382, § 17; reenacted without change, Laws, 1999, ch. 480, § 17; reenacted without change, Laws, 2002, ch. 471, § 17; reenacted without change, Laws, 2011, ch. 337, § 17; reenacted without change, Laws, 2014, ch. 526, § 17, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 17, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-35. Requirements for “True Bill” of indictment; place where indictment is to be tried [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 18; reenacted without change, Laws, 1998, ch. 382, § 18; reenacted without change, Laws, 1999, ch. 480, § 18; reenacted without change, Laws, 2002, ch. 471, § 18; reenacted without change, Laws, 2011, ch. 337, § 18; reenacted without change, Laws, 2014, ch. 526, § 18, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 18, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-37. Immunity or privilege given on account of testimony; waiver [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 19; reenacted without change, Laws, 1998, ch. 382, § 19; reenacted without change, Laws, 1999, ch. 480, § 19; reenacted without change, Laws, 2002, ch. 471, § 19; reenacted without change, Laws, 2011, ch. 337, § 19; reenacted without change, Laws, 2014, ch. 526, § 19, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 19, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-39. Sealing of records, orders and subpoenas of grand jury [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 20; reenacted without change, Laws, 1998, ch. 382, § 20; reenacted without change, Laws, 1999, ch. 480, § 20; reenacted without change, Laws, 2002, ch. 471, § 20; reenacted without change, Laws, 2011, ch. 337, § 20; reenacted without change, Laws, 2014, ch. 526, § 20, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 20, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-41. Space for grand jury; cooperation of Department of Public Safety and Bureau of Narcotics [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 21; reenacted without change, Laws, 1998, ch. 382, § 21; reenacted without change, Laws, 1999, ch. 480, § 21; reenacted without change, Laws, 2002, ch. 471, § 21; reenacted without change,

Laws, 2011, ch. 337, § 21; reenacted without change, Laws, 2014, ch. 526, § 21, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 21, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-43. Authority of Supreme Court to promulgate rules for operation of grand jury system [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 23; reenacted without change, Laws, 1998, ch. 382, § 22; reenacted without change, Laws, 1999, ch. 480, § 22; reenacted without change, Laws, 2002, ch. 471, § 22; reenacted without change, Laws, 2011, ch. 337, § 22; reenacted without change, Laws, 2014, ch. 526, § 22, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 22, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-45. Severability provision [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 24; reenacted without change, Laws, 1998, ch. 382, § 23; reenacted without change, Laws, 1999, ch. 480, § 23; reenacted without change, Laws, 2002, ch. 471, § 23; reenacted without change, Laws, 2011, ch. 337, § 23; reenacted without change, Laws, 2014, ch. 526, § 23, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 23, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-47. Retroactivity of chapter [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 25; reenacted without change, Laws, 1998, ch. 382, § 24; reenacted without change, Laws, 1999, ch. 480, § 24; reenacted without change, Laws, 2002, ch. 471, § 24; reenacted without change, Laws, 2011, ch. 337, § 24; reenacted without change, Laws, 2014, ch. 526, § 24, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 24, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 13-7-49. Chapter does not amend, repeal or supersede other laws governing grand juries, investigations, indictments or prosecutions [Repealed effective July 1, 2024].

SOURCES: Laws, 1993, ch. 553, § 26; reenacted without change, Laws, 1998, ch. 382, § 25; reenacted without change, Laws, 1999, ch. 480, § 25; reenacted without change, Laws, 2002, ch. 471, § 25; reenacted without change, Laws, 2011, ch. 337, § 25; reenacted without change, Laws, 2014, ch. 526, § 25, eff from and after July 1, 2014.

Editor's Note — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

“SECTION 27. This act shall take effect and be in forces from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024.”

This section was reenacted without change by Laws of 2014, ch. 526, § 25, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

TITLE 15

LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1

Limitation of Actions

§ 15-1-3. Completion of limitation extinguishes right; partial payment.

JUDICIAL DECISIONS

2. Extinguishment, effect of.

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run, and the purchaser failed to take advantage of the many procedural mechanisms available to

him to extend the life of his judgment; thus, the judgment had been extinguished, and the purchaser could not bring a valid garnishment action. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

§ 15-1-5. Period of limitations shall not be changed by contract.

JUDICIAL DECISIONS

7. Miscellaneous.

Claim by homeowners against a builder under the New Home Warranty Act (NHWA), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHW limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

When homeowners and a builder entered into an agreement purportedly toll-

ing limitations periods applicable to the homeowners' claims against the builder for structural defects in the homeowners' home, the homeowners' common-law claims were time-barred because (1) the claims fell under Miss. Code Ann. § 15-1-41's statute of repose, and (2) Miss. Code Ann. § 15-1-5 barred contracts to change a limitations period. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

§ 15-1-7. Limitations applicable to actions to recover land.

JUDICIAL DECISIONS

9. Persons affected in general.

10. —Remaindermen.

9. Persons affected in general.

10. —Remaindermen.

Chancellor properly denied a motion to dismiss filed by a mother and her daugh-

ter because the brother's action to set aside the sister's deed, remove the cloud on his title, and to quiet title to the disputed property was governed by the 10-year statutes of limitations where the daughter knew about the brother's deed, the brother was a remainderman who did

not yet have the present right to possess the property, and the brother had a present cause of action. *Lott v. Saulters*, 133 So. 3d 794 (Miss. 2014).

§ 15-1-9. Limitations applicable to suits in equity to recover land.

JUDICIAL DECISIONS

3. Persons affected.

Chancellor properly denied a motion to dismiss filed by a mother and her daughter because the brother's action to set aside the sister's deed, remove the cloud on his title, and to quiet title to the disputed property was governed by the 10-

year statutes of limitations where the daughter knew about the brother's deed, the brother was a remainderman who did not yet have the present right to possess the property, and the brother had a present cause of action. *Lott v. Saulters*, 133 So. 3d 794 (Miss. 2014).

§ 15-1-13. Ten years' adverse possession gives title; exceptions.

JUDICIAL DECISIONS

1. Possession in general.
2. —Nature of possession, generally.
4. — —Particular cases.
12. Property held adversely.
13. —Adjoining tract.
28. Running of limitation period.

1. Possession in general.

2. —Nature of possession, generally.

4. — —Particular cases.

Chancery court did not err in finding a claimant did not adversely possess approximately eighty acres of unimproved land, in accordance with Miss. Code Ann. § 15-1-13(1), because testimony by two owners of the land established they believed the claimant was a co-tenant and given the claimant's illusory position as a co-tenant, none of the claimant's actions would have given the owners notice he was attempting to adversely possess the property; the claimant and the owners were relatives. *Dean v. Slade*, 63 So. 3d 1230 (Miss. Ct. App. 2010), writ of certiorari denied by 63 So. 3d 1229, 2011 Miss. LEXIS 310 (Miss. 2011).

12. Property held adversely.

13. —Adjoining tract.

Substantial evidence supported a finding of adverse possession because property owners met their burden of proof through privity of possession with their predecessors in the use and maintenance of their properties. *Mize v. Westbrook Constr. Co. of Oxford, LLC*, — So. 3d —, 2013 Miss. App. LEXIS 432 (Miss. Ct. App. July 16, 2013).

28. Running of limitation period.

In addition to satisfying the other elements for adverse possession, a neighbor was in possession of the disputed property for at least ten years because the neighbor began possessing the disputed 7.79 acres in 1988 when it purchased 482 acres from the previous owner and began conducting various activities as if it rightfully owned the 7.79 acres until 2007, when the abutting landowners erected a fence. *Roberts v. Young's Creek Inv., Inc.*, 118 So. 3d 665 (Miss. Ct. App. 2013).

§ 15-1-29. Limitations applicable to actions on accounts and unwritten contracts.

JUDICIAL DECISIONS

3. Unwritten contracts, generally.
 4. — Involving employment.
- 3. Unwritten contracts, generally.**
- 4. — Involving employment.**
- County court properly granted a town's motion for a directed verdict in a town

marshal's complaint for unpaid salary compensation because the action was barred by the one-year statute of limitations for oral contracts where the minutes of a town meeting did not fully address the duties, obligations, and rate of pay for the position. *Vance v. Town of Lula*, 135 So. 3d 924 (Miss. Ct. App. 2013).

§ 15-1-35. Limitations applicable to actions for certain torts.

JUDICIAL DECISIONS

- 10. Intentional infliction of emotional distress.**
- Where an employee's claim of intentional infliction of emotional distress was based on the same allegations underlying the employee's complaints of employment

discrimination, the claim was time-barred because the complaint was filed more than one year after the employee was terminated. *Fife v. Vicksburg Healthcare, LLC*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 67748 (S.D. Miss. May 13, 2013).

§ 15-1-41. Limitations applicable to actions arising from deficiencies in constructions, or improvements to real property.

JUDICIAL DECISIONS

- 3. Applicability.**
- Claim by homeowners against a builder under the New Home Warranty Act (NHW), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHWA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

When homeowners and a builder entered into an agreement purportedly toll-

ing limitations periods applicable to the homeowners' claims against the builder for structural defects in the homeowners' home, the homeowners' common-law claims were time-barred because (1) the claims fell under Miss. Code Ann. § 15-1-41's statute of repose, and (2) Miss. Code Ann. § 15-1-5 barred contracts to change a limitations period. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

§ 15-1-43. Limitations applicable to actions founded on domestic judgments or decrees; renewal of judgment or decree; notice of renewal.

JUDICIAL DECISIONS

3. Garnishment.

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run, and the purchaser failed to take advantage of the many procedural mechanisms available to him to extend the life of his judgment; thus, the judgment had been extinguished, and the purchaser could not bring a valid garnishment action. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

Seller was not estopped from asserting the statute of limitations defense because it never prevailed on the argument that the judgment entered in favor of the purchaser was unenforceable; therefore, if the seller was taking an inconsistent position,

the doctrine of estoppel would not apply. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run; the purchaser's motion to amend the mandate in the action the seller filed against him did not toll the statute. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

Because a purchaser's circuit court judgment was not the underlying proceeding, it was not stayed by the order granting interlocutory appeal. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

§ 15-1-47. Lien of judgments limited.

JUDICIAL DECISIONS

2. Garnishment.

4. Tolling of limitations period.

2. Garnishment.

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run, and the purchaser failed to take advantage of the many procedural mechanisms available to him to extend the life of his judgment; thus, the judgment had been extinguished, and the purchaser could not bring a valid garnishment action. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

Purchaser was not legally enjoined from bringing an enforcement action of his own while a bank's garnishment action was stayed because no proceeding occurred that operated as an automatic stay of his judgment; the mere circumstance that the enforceability of the purchaser's final judgment was the subject matter of an

appeal in a different party's garnishment action did not operate to enjoin the purchaser from attempting to collect the judgment. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

Seller was not estopped from asserting the statute of limitations defense because it never prevailed on the argument that the judgment entered in favor of the purchaser was unenforceable; therefore, if the seller was taking an inconsistent position, the doctrine of estoppel would not apply. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

Because a purchaser's circuit court judgment was not the underlying proceeding, it was not stayed by the order granting interlocutory appeal. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

4. Tolling of limitations period.

Trial court did not err in ruling that a purchaser's garnishment action against a

seller was time-barred because it was filed months after the statute had run; the purchaser's motion to amend the mandate in the action the seller filed against him

did not toll the statute. *Johnson v. Parker Tractor & Implement Co.*, 132 So. 3d 1032 (Miss. 2014).

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

JUDICIAL DECISIONS

1. In general.
5. —Particular cases.
15. Torts, generally.
23. —Damage to realty.
24. —Malpractice.
27. Running of limitation period, generally.
28. — Accrual of cause of action; miscellaneous.
33. — —Contracts.
38. — Tolling of statute.
39. Particular cases; miscellaneous.
40. — Insurance.
43. —Employment.

1. In general.

5. —Particular cases.

Trial court properly found that the fraud, unjust enrichment, and claims related to decedent's photographs were time-barred under Miss. Code Ann. § 15-1-49 (2012) where the claims accrued when the legatees learned that the recording studio intended to use the photographs in 1990, but the legatees had not filed suit until over 20 years later. *Anderson v. LaVere*, 136 So. 3d 404 (Miss. 2014).

Chancellor erred in awarding a brother damages for actual and punitive because his claim fell under the three-year statute of limitations for which no other period of limitation was prescribed. *Lott v. Saulters*, 133 So. 3d 794 (Miss. 2014).

15. Torts, generally.

23. —Damage to realty.

As the chancellor found that a homeowner's widow first learned of a sinkhole that damaged their property less than three years before suit was filed, the chancellor did not manifestly err in finding that the complaint was timely filed under the discovery rule. *Borne v. Estate of T. L. Carraway*, 118 So. 3d 571 (Miss. 2013).

24. —Malpractice.

Although an oil company's property became infested with alligators well outside the three-year limitations period for a private nuisance claim filed by the adjoining owners, a fact issue as to whether the infestation should have been discovered prior to the owners' purchase of their property precluded summary judgment where: (1) the owners' property was overgrown; (2) undergrowth could have concealed the alligators; and (3) alligator infestation was an unusual injury that did not put the owners' on notice by an occasional sighting. *Christmas v. Exxon Mobil Corp.*, 138 So. 3d 168 (Miss. Ct. App. 2013), reversed by 138 So. 3d 123, 2014 Miss. LEXIS 244 (Miss. 2014).

Trial court determined that the stockholder knew or should have known of the attorney's alleged legal malpractice on March 10, 2005, when he signed the 2005 buyout agreement. Thus, the three-year limitations period under Miss. Code Ann. § 15-1-49 for filing a legal malpractice claim had expired before the stockholder's complaint was filed on May 13, 2009; therefore, the trial court correctly found that the action was time-barred and correctly granted the attorney's motion for summary judgment. *Evans v. Howell*, 121 So. 3d 919 (Miss. Ct. App. 2013), writ of certiorari denied by 121 So. 3d 918, 2013 Miss. LEXIS 478 (Miss. 2013).

27. Running of limitation period, generally.

28. — Accrual of cause of action; miscellaneous.

Welder's products liability and failure to warn action, filed on November 14, 2005, against two manufacturers was time-barred pursuant to Miss. Code Ann. § 15-1-49 because the statute of limita-

tions began to run in September 2002 when the welder knew of his Parkinsonism, rather than October 2005 when the welder was diagnosed with manganism; the welder's cause of action accrued upon the discovery of the injury, not the cause of the injury. *Lincoln Elec. Co. v. McLemore*, 54 So. 3d 833 (Miss. 2010).

33. — Contracts.

Plaintiffs sufficiently pled a breach of contract claim against a mortgage servicer by specifically alleging potential breaches, including an incorrect property insurance charge. The date of discovery of the irregularities, for purpose of deciding whether the discovery rule in Miss. Code Ann. § 15-1-49(2) applied, was an issue of fact to be decided by a jury. *Bailey v. Am. Home Mortg. Servicing, Inc.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 78420 (S.D. Miss. June 6, 2012).

38. — Tolling of statute.

Welder's products liability and failure to warn action, filed on August 31, 2004, against two manufacturers did not toll the three-year statute of limitations in Miss. Code Ann. § 15-1-49 because the welder voluntarily dismissed the complaint on December 28, 2004; the welder's subsequent complaint filed on November 14, 2005 was time-barred under § 15-1-49 because the welder knew of the injury on September 3, 2002. *Lincoln Elec. Co. v. McLemore*, 54 So. 3d 833 (Miss. 2010).

39. Particular cases; miscellaneous.

As appellant failed to file a motion for extension of time to serve an estate until more than 120 days after filing the complaint, and as the statute of limitations

(Miss. Code Ann. § 15-1-49) expired thereafter, the trial court did not abuse its discretion in dismissing his suit against the estate with prejudice. *Covington v. McDaniel (In re Estate of Necaise)*, 126 So. 3d 49 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 598 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 601 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 610 (Miss. 2013).

40. — Insurance.

Insured's action against an insurer for uninsured/underinsured motorist coverage, filed on September 26, 2008, was time-barred under Miss. Code Ann. § 15-1-49 because the statute of limitations began to run on November 30, 2004, the date a default judgment was entered against a driver, proving the driver was uninsured and the tortfeasor; the insured was aware of her damages on the date of the default judgment. *Madison v. Geico Gen. Ins. Co.*, 49 So. 3d 1166 (Miss. Ct. App. Dec. 14, 2010).

43. — Employment.

Chancery court properly ruled that a teacher's claim for relief was barred by the statute of limitations because she failed to refile her complaint in chancery court until she again alleged a breach of contract and sexual discrimination as an original complaint; since the teacher failed to properly perfect an appeal of the school district's decision affirming her termination and to obtain federal ancillary jurisdiction over her state-law claim, no tolling of the statute of limitations occurred. *Lacour v. Claiborne County Sch. Dist.*, 119 So. 3d 1128 (Miss. Ct. App. 2013).

§ 15-1-51. Limitations of suits by and against the state, counties and municipal corporations.

JUDICIAL DECISIONS

3. Suits by State and its subdivisions.

Statute of limitations did not apply to a school district's claim for a refund of oil and gas severance taxes because Miss. Const. art. IV, § 104 and Miss. Code Ann.

§ 15-1-51 provided that statutes of limitation in civil causes did not run against the state or its subdivisions. *Jones County Sch. Dist. v. Miss. Dep't of Revenue*, 111 So. 3d 588 (Miss. 2013).

§ 15-1-53. Effect of running of statute of limitations against executor, administrator, guardian, or other trustee, as against beneficiary.

JUDICIAL DECISIONS

2. Persons affected.

Savings clause in Miss. Code Ann. § 15-1-59 did not act to toll the statute of limitations regarding a judgment a ward's conservator obtained in divorce action against the ward's former husband. Under

Miss. Code Ann. § 93-13-38 the right to pursue the action for money owed was in the conservator not the ward so the statute of limitations ran against conservator. *Lewis v. Smith* (In re Lewis), 110 So. 3d 811 (Miss. Ct. App. 2013).

§ 15-1-59. Saving in favor of persons under disabilities.

JUDICIAL DECISIONS

1.5. Applicability.

2. Actions under Tort Claims Act.

1.5. Applicability.

Savings clause did not act to toll the statute of limitations regarding a judgment a ward's conservator obtained in divorce action against the ward's former husband. Under Miss. Code Ann. § 93-13-38 the right to pursue the action for money owed was in the conservator not the ward so under Miss. Code Ann. § 15-1-53, the statute of limitations ran against conservator. *Lewis v. Smith* (In re Lewis), 110 So. 3d 811 (Miss. Ct. App. 2013).

2. Actions under Tort Claims Act.

Plaintiff's tort action based on events that occurred when he was 19 years old was timely as it was filed less than three years after his 21st birthday; removal of the disability of minority did not arise automatically upon the occurrence of specified events except for reaching the age of 21, and thus, plaintiff's emancipation did not trigger the automatic removal of disability of minority. *Baker v. RR Brink Locking Sys.*, 721 F.3d 716 (5th Cir. 2013).

§ 15-1-69. Commencement of new action subsequent to abatement or defeat of original action.

JUDICIAL DECISIONS

6. Action improperly dismissed.

Chancery court properly ruled that a teacher's claim for relief was barred by the statute of limitations because she failed to refile her complaint in chancery court until she again alleged a breach of contract and sexual discrimination as an original complaint; since the teacher failed to

properly perfect an appeal of the school district's decision affirming her termination and to obtain federal ancillary jurisdiction over her state-law claim, no tolling of the statute of limitations occurred. *Lacour v. Claiborne County Sch. Dist.*, 119 So. 3d 1128 (Miss. Ct. App. 2013).

CHAPTER 3

Prevention of Frauds

ARTICLE 1.

IN GENERAL.

§ 15-3-1. Certain contracts to be in writing.

JUDICIAL DECISIONS

2. Applicability.
3. Oral promises and contracts.

2. Applicability.

Insurance agent's assertion that claims by intended insurance beneficiaries were barred by the statute of frauds because the change of beneficiary was not done in writing and approved, as required, lacked merit because the statute of frauds only affected matters prior to the execution of the contract or policy; as the issue involved the change of beneficiaries after the execution of the policy, the statute was inapplicable. *Strait v. McPhail*, — So. 3d —, 2013 Miss. App. LEXIS 768 (Miss. Ct. App. Nov. 12, 2013).

Where a telephone company's constructive license to continue and use telephone lines and fixtures derived from Miss. Code Ann. § 77-9-715, the constructive license did not violate the statute of frauds, Miss. Code Ann. § 15-3-1, because the statute of frauds did not apply given that the tele-

phone company's rights arose by operation of law and did not come from a contract. *Marlow, LLC v. BellSouth Telecomms., Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011), affirmed in part and reversed in part by, remanded by 686 F.3d 303, 2012 U.S. App. LEXIS 13425 (5th Cir. Miss. 2012).

3. Oral promises and contracts.

Chapter 13 debtor's claim that he had an oral agreement with a creditor to sell the creditor a company he owned that manufactured and sold bird calls, in exchange for payment of \$250,000 in five \$50,000 increments over five years and the creditor's promise to forgive debts the debtor owed under several promissory notes he signed, was barred by two Mississippi statutes of frauds: Miss. Code Ann. §§ 15-3-1 and 75-2-201. *Ziegler v. Hood (In re Hood)*, — Bankr. —, 2013 Bankr. LEXIS 3709 (Bankr. N.D. Miss. Sept. 3, 2013).

ARTICLE 3.

UNIFORM FRAUDULENT TRANSFER ACT.

§ 15-3-101. Definitions.

JUDICIAL DECISIONS

1. Claim against only one tenant.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because

under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decedent's death. *Kelly v. Roby (In re Estate of Roby)*, 84 So. 3d 786 (Miss. Ct. App. June 28, 2011).

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F

FIREFIGHTERS AND FIRE DEPARTMENTS.

Sovereign immunity.

General provisions, §§11-46-1 to
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RESTORATION ACT, §11-61-1.

